Docket No.: 36488-167637
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	
Bentley et al.	Art Unit: 3621
Application No: 09/982,852	Examiner: C. O. Sherr
Confirmation No: 7743	
Filed: October 22, 2001	Atty. Docket No: 36488-167637

Customer No:

26694
PATENT TRADEMARK OFFICE

For: SYSTEM, METHOD AND COMPUTER
PROGRAM PRODUCT FOR A FAIL-SAFE
START-UP MECHANISM FOR CLIENTS OF
A LICENSE SERVER

## RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notification of Non-Compliant Appeal Brief mailed January 18, 2007, Applicants submit herewith a revised Appeal Brief. Applicants believe the revised Appeal Brief complies with 37 C.F.R. 41.37(c) and request timely review.

Dated: Respectfully submitted,
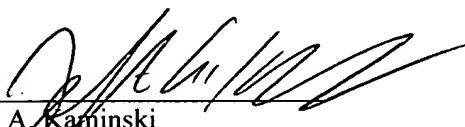
By_____
Jeffri A. Kaminski
   Registration No.: 42,709
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JAN 29 2007

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,852	10/22/2001	Daniel V. East	36488-167637	7743

26694	7590	01/18/2007

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EXAMINER

ART UNIT	PAPER NUMBER

DATE MAILED: 01/18/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

Resp to n/non-compliant
Appeal Brief
DOCKETED
CLIENT/MATTER # 167637 ATTY CJS
DUE DATE 4/18/2007
FINAL DEADLINE 7/18/2007
DKTED BY MK Oat

RECEIVED
JAN 19 2007
VENABLE IP DOCKETING DEPARTMENT

PTO-90C (Rev. 10/03)
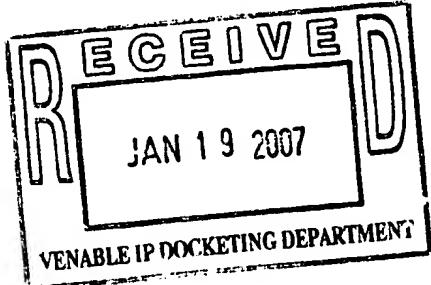
Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/982,852	Applicant(s) EAST ET AL.	
	Examiner Cristina Owen Sherr	Art Unit 3621	

JAN 29 2007 *The MAILING DATE of this communication appears on the cover sheet with the correspondence address--*

The Appeal Brief filed on <u>06 October 2006</u> is defective for failure to comply with one or more provisions of 37 CFR 41.37. To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal,** along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☒ Other (including any explanation in support of the above items):

<u>Regarding #1, above, each of the appendices to the brief must be present, on a separate page, even if said appendix is empty. Regarding, #4, above, each of the limitations of each independent claim must be mapped to its support in the specification, by page and line, and to the drawings, if any. The same must be done with any dependent claims separately argued.</u>

PIERRE EDDY ELISCA
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600

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26694
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APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within one month of the Notice of Panel Decision from Pre-Appeal Review filed in this case on September 6, 2006.

The fees required under § 41.20(b)(2), and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I.   REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Bentley Systems, Inc.
685 Stockton Drive
Exton, PA 19341-0678

II.   RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.   STATUS OF CLAIMS

A.   Total Number of Claims in Application

There are 24 claims pending in application.

Claims 1-4 and 7-24 have been finally rejected in the Office Action of May 4, 2006. Claims 1-4 and 7-24 are being appealed. Claims 5 and 6 have been allowed.

IV.   STATUS OF AMENDMENTS

Applicants filed an Pre-Appeal Request for Review and a Notice of Appeal on July 20, 2006. No claim amendments were made after final rejection.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 recites: a method for providing access to application software in the event of inaccessibility of a license management system, comprising the steps of:

determining whether a user has a valid software license to run a software application on a client workstation including sending a query to the license management system (specification, page 11, lines 9-14; page 12, lines 17-18; FIG. 2, 202; FIG. 5, 502, page 14, lines 3-5); and

permitting a recognized user to execute said software application on said client workstation in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query (specification page 14, line 27 to page 15, line 4; FIG. 5, 508 and 512).

Claim 16 recites: a system for managing access to concurrent software licenses, comprising:
a network (FIG. 1, 110);

a license management system (FIG. 1, 108) coupled to said network operative to authorize a user of a software application; and

a client workstation (FIG. 1, 102) coupled to said network,

wherein said client workstation comprises a validation device (specification page 11, lines 9-14) operative to permit a recognized user to execute said software application in the event that the license management system is unable to communicate with said client workstation over said network (specification page 14, line 27 to page 15, line 4; FIG. 5 steps 508 and 512).

Claim 24 recites: a computer program product embodied on a computer readable medium, said computer program product comprising program logic comprising: (specification page 6, lines 7-14; page 9, lines 27-28)

program code means for enabling a computer to determine whether a user has a valid software license to execute a software application (specification, page 11, lines 9-14; FIG. 5, 502, page 14, lines 3-5) including:

program code means for enabling the computer to send a query to a license management system (specification page 12, lines 17-18; FIG. 2, 202); and

program code means for enabling the computer to permit recognized users to execute said software application in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with the computer about said query (specification page 14, line 27 to page 15, line 4; FIG. 5, 508 and 512).

Embodiments of the present invention provide a method and system for providing access to licensed software products using a license management system. Embodiments of the present invention provide numerous advantages over known methods for accessing licensed software products. Advantages of the invention are described in the specification at page 11, lines 5-14, for example. The advantages include allowing a client to access the licensed software product in the event that a license management system is in accessible. For example, the license management system may be unable to receive or respond to a query or unable to communicate in any fashion with client workstation.

These and other advantages are achievable with embodiments of the present invention as recited, for example, in independent claim 1. As recited in independent claim 1, a method for providing access to software in the event of inaccessibility of a license management system is provided. In conventional license management systems, a client workstation requests a license from a license management system. If the license management system is inaccessible, the client cannot run or access the licensed software.

As recited in claim 1, it is determined whether a user has a valid software license to run a software application on a client workstation 102, 104, 106. This determination includes sending a query to the license management system 108. Please see page 13, lines 13-22 and Figure 1 of the specification. The license management system may be unable to receive and/or respond to the query, and/or be unable to communicate with the client workstation 102, 104, 106 about the query. The license management system 108 may be inaccessible because of, for example, failure of the license server, network failure, or congestion. Please see page 13, lines 23-27. If the license management system is inaccessible, a recognized user is permitted to execute the software

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application on the client workstation 102, 104, 106. Please see page 14, lines 3-20 and steps 502-516 in Figure 5. A recognized user is defined as a user who has been previously authorized by the license management system 108 as a valid user. Please see page 14, lines 3-5. If the user is a recognized user, the user is authorized access to and is able to execute to the software application, please see Figure 5, steps 508-512 and page 14, line 27 – page 15, line 5.

Accordingly, embodiments of the present invention allow a recognized user, i.e., a previously valid user, access to the licensed product in the event the license management system is unavailable.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether the Examiner has established that claims 1-4 and 7-24 are obvious over U.S. Patent Number 5,671,412 to Christiano.

VII.   ARGUMENT

Christiano describes a basic licensing client-server system that includes a function to diagnose and location a license server when the license server cannot be located normally. Please see column 4, lines 55-57 of Christiano. Christiano includes a fail safe license. A fail safe indicator may be entered into a license record for a client workstation. The fail safe indicator allows licenses to be checked out when no licenses are available during failures. This can be beneficial during license management system failure when normally no licenses would be available. For example, whenever a failure occurs in a license management system, licenses are typically denied to the requester. Please see column 17, lines 16-22. In some embodiments of Christiano, a fail safe license can be checked out regardless of the type of error. In other embodiments the fail safe license can be checked can only when the error is an actual failure of the license system, and not when the client is denied a license due to the license policy, for example, when no further licenses are available due to the limits on the number of licenses available for checking out, please see column 17, lines 27-34. Thus, the only distinction Christiano makes regarding checking out a fail safe license is that a fail safe license can only be checked out when an error is actual failure of the

licensing system. There is no mention whatsoever of only allowing a recognized user access to a fail safe license. In fact, there is no teaching or suggestion anywhere within Christiano of the concept of a recognized user as is recited in the present claims. The portions of Christiano relied on by the Examiner as teaching a recognized user, column 17, lines 15-20 and column 3, lines 57 – column 4, line 4 make no mention what so ever of a recognized user. The cited portions of Christiano only teach that a fail safe license can be checked out when a failure occurs in the license management system. No determination is made whether the requestor is a recognized user.

In contrast, each of independent claims 1, 16, and 24 specify that recognized users are permitted access to the licensed software product in the event that the license management system in inaccessible.

Furthermore, independent claim 16 requires that the recognized user can access the software application in the event that the license management system is unable to communicate with the client workstation over the network. In comparison, Christiano requires communication between the client and the license server, even in the fail save mode. For example, as described at column 18, lines 22-44, of Christiano if a license is not available for the requesting client, the license management system checks whether a fail safe license is requested per step 154. The license management system checks if a fail safe license is appropriate and if so, the "fail safe status" is output to the requesting client computer, per step 158. Please see column 18, lines 33-35. Thus, Christiano requires communication of the fail safe license from the license management system to the requesting client computer system. Christiano makes no provision to allow a client access to the license software product in the event that there is no communication between the license management system and the client. In fact, Figure 15 of Christiano illustrates that if no server is found on the network by the requesting client in block 286, then the connection attempts ends in block 288 and no further action is taken. Thus, if there is no communication between the requesting client and the license management system in Christiano, the client cannot access the licensed software product. This is the direct opposite of the claimed invention, for example as recited in independent claim 16.

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Moreover, the description of the checking out of a fail safe license at column 18, lines 22-44 emphasize the fact that Christiano does not teach or suggest the concept of a recognized user as recited in the present claims. In Christiano, the fail safe license is provided to a requesting client either in all cases when a fail safe license is requested or only if there is a failure in the license management system. There is no determination of whether the requesting client is a recognized user as is required by rejected claims. Please see column 18, lines 29-34 and line 42-44 of Christiano.

In view of the above discussion, it is clear that the cited reference fails to teach or suggest the features recited in the claims. Each of the dependent claims is allowable for at least the reasons as being dependent from an allowable independent claim. For these reasons, the withdrawal of the rejections of claims 1-4 and 7-24 is respectfully requested.

Dated: _1/29/07_   Respectfully submitted,
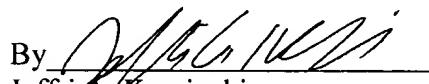
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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 09/982,852

1.　　A method for providing access to application software in the event of inaccessibility of a license management system, comprising the steps of:

determining whether a user has a valid software license to run a software application on a client workstation including sending a query to the license management system; and

permitting a recognized user to execute said software application on said client workstation in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query.

2.　　The method according to claim 1, wherein said permitting step comprises:
recognizing said user as a previously valid user, before permitting said recognized user to execute said software application.

3.　　The method according to claim 2, wherein said recognizing step comprises:
determining if access to said software application by said user has previously been validly authorized via said license management system.

4.　　The method according to claim 2, further comprising:
executing said software application in a punishment mode comprising:
imposing a punishment.

5.　　The method according to claim 2, further comprising:
executing said software application in a punishment mode comprises:
imposing a punishment comprising a time delay.

6.　　The method according to claim 5, wherein said punishment mode comprises:

imposing a punishment comprising a time delay is imposed between when said user attempts to run said software application and when said user is permitted to run said software application.

7.   The method according to claim 4, wherein said punishment comprises:
        increasing said punishment upon occurrence of a first criterion.

8.   The method according to claim 4, wherein said punishment comprises:
        decreasing said punishment upon occurrence of a second criterion.

9.   The method according to claim 1, further comprising:
        storing recognition of previously authorized access on a local workstation used by said recognized user.

10.   The method according to claim 9, wherein said recognition is stored as an encrypted code key in a register of said local workstation.

11.   The method according to claim 4, wherein said punishment mode comprises:
        increasing said punishment if said recognized user subsequently attempts to execute said application in failsafe mode in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with said client workstation about said query.

12.   The method according to claim 4, wherein said punishment mode comprises:
        decreasing punishment if said recognized user subsequently attempts to execute said application including validated authorization by the license management system.

13.   The method according to claim 4, wherein said punishment comprises:
        imposing at least one of a time delay, a time limit, a software impediment, and a disablement of functionality of said software application program.

14.   The method according to claim 1, wherein said license management system is a license server.

15.   The method according to claim 1, wherein said permitting step comprises determining whether any previously valid authorizations have been established with said license management system by checking a value set when said software application is initially validly installed.

16.   A system for managing access to concurrent software licenses, comprising:
            a network;
            a license management system coupled to said network operative to authorize a user of a software application; and
            a client workstation coupled to said network,
            wherein said client workstation comprises a validation device operative to permit a recognized user to execute said software application in the event that the license management system is unable to communicate with said client workstation over said network.

17.   The system according to claim 16, wherein said validation device is operative to recognize whether said user previously obtained a valid authorization to execute said software application by said license management system before permitting execution of said software application.

18.   The system according to claim 16, wherein said validation device permits said user to run said software application with a punishment.

19.   The system according to claim 18, wherein said validation device permits said user to execute said software application with said punishment if a previously valid authorization of said user is recognized.

20.   The system according to claim 19, wherein said license management system is a license server.

21.   The system according to claim 19, wherein said punishment comprises at least one of a time delay, a time limit, a software impediment, and a disablement of functionality of said software.

22.   The system according to claim 21, wherein said punishment increases if said user previously attempted access with said license management system while said license management system is unable to communicate with said client workstation over said network.

23.   The system according to claim 22, wherein said punishment decreases if said user subsequently is validly authorized using said license management system.

24.   A computer program product embodied on a computer readable medium, said computer program product comprising program logic comprising:

        program code means for enabling a computer to determine whether a user has a valid software license to execute a software application including:

        program code means for enabling the computer to send a query to a license management system; and

        program code means for enabling the computer to permit recognized users to execute said software application in the event that the license management system is unable to receive and/or respond to said query, and/or is unable to communicate with the computer about said query.

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APPENDIX B

EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

APPENDIX C

RELATED PROCEEDINGS

No related proceedings are referenced in II. above, or copies of decisions in related proceedings are not provided.